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Paper No. 5

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In re Application of
Joseph L. Waisman et al
Application No. 09/348,142
Filed: July 2, 1999
Attorney Docket No. CIP-1

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OFFICE OF PETITIONS

AND

DECISION ON PETITION
GRANTING FILING DATE

In re Application of
Joseph L. Waisman et al
Application No. 09/887,693
Filed: September 18, 2001
Attorney Docket No. CIP-2

This is in response to the informal communication received October 9, 2001, which is a marked-up copy of a filing receipt. The informal communication of October 9, 2001 is being treated as a petition requesting that an application number and filing date of September 18, 2001 be assigned to "CIP-2" papers filed pursuant to the provisions of 37 CFR 1.53(b) in the name of Joseph L. Waisman et al.

The petition is granted.

The application papers indicated as being for a "CIP-2" and received in the PTO on September 18, 2001 were inadvertently placed in the filewrapper of parent Application No. 09/348,142. These papers have been removed from parent Application No. 09/348,142 and placed in a new filewrapper with an assigned application number of 09/887,693 and accorded a filing date of September 18, 2001. All future communications regarding this file should be directed to Application No. 09/887,693.

Along with the informal communication of October 9, 2001, petitioner submitted a "Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)" for the CIP-2 application

papers filed on September 18, 2001, which by this decision, was assigned Application No. 09/887,693 and accorded a filing date of September 18, 2001.

The statute at 35 U.S.C. 122(b) requires the United States Patent and Trademark Office (USPTO) to publish utility and plant applications filed on or after November 29, 2000, unless applicant makes a nonpublication request upon filing. The requirement that a nonpublication request must be made upon filing of the application is set forth in the statute. See 35 U.S.C. 122(b)(2)(B)(i). Therefore, the USPTO does not have the authority to accept a nonpublication request after the filing of an application. Accordingly, the nonpublication request filed on October 9, 2001 for Application No. 09/887,693 will not be recognized.

If applicants desire to avoid publication of Application No. 09/887,693, applicants may wish to file a continuation application under 37 CFR 1.53(b) claiming benefit to the above-identified applications under 35 U.S.C. 120 with a nonpublication request and, thereafter, abandon Application No. 09/887,693 by filing a petition under 37 CFR 1.138(c) for express abandonment to avoid publication, including a petition fee (\$130.00). This petition should be mailed to Box PGPUB-ABD or faxed to the Pre-Grant Publication Division at (703) 305-8568.

Parent Application No. 09/348,142 is being forwarded to Technology Center AU 3641 for processing as an abandoned application

Application No. 09/887,693 is being forwarded to the Office of Initial Patent Examination for preexamination processing with a filing date of September 18, 2001 and for mailing of a filing receipt with a projected publication date.

Telephone inquiries regarding this communication should be directed to Frances Hicks at (703) 305-8680.



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